

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CARLOS ALFREDO GURRY,

Case No. 3:16-cv-00121-MMD-WGC

Petitioner,

ORDER

v.

ISIDRO BACA, et al.,

Respondents.

Petitioner has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (dkt. no. 1-1). While petitioner submitted a completed financial certificate, he has failed to file an application to proceed *in forma pauperis* or submit the required inmate account statements. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate.

Further, petitioner indicates on the face of his petition that this is a successive petition challenging his judgment of conviction in state-court case no. C95399 (dkt. no. 1-1, at 2). 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” Where a petition has been dismissed with prejudice as untimely or because

1 of procedural default, the dismissal constitutes a disposition on the merits and renders a
2 subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v.*
3 *Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049,
4 1053 (9th Cir. 2005). Even if petitioner had filed a fully completed application to proceed
5 *in forma pauperis*, his petition would be subject to dismissal because he has not
6 demonstrated that he has obtained leave from the court of appeals to file this successive
7 petition.

8 It is therefore ordered that this action is dismissed without prejudice as set forth in
9 this order.

10 It is further ordered that a certificate of appealability is denied, as jurists of reason
11 would not find the court's dismissal of this improperly commenced action without prejudice
12 to be debatable or incorrect.

13 It is further ordered that the Clerk send petitioner one copy of the papers that he
14 submitted in this action.

15 It is further ordered that the Clerk enter judgment accordingly and close this case.

16 DATED THIS 21st day of April 2016.

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19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
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